

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Leon Eugene Grayson, #316539,

Petitioner,

vs.

A.J. Padula, Warden of Lee
Correctional Institution,

Respondent.

C.A. No. 4:09-89-HMH-TER

OPINION & ORDER

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Thomas E. Rogers, III, made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 of the District of South Carolina.¹ Leon Eugene Grayson (“Grayson”) is a pro se state prisoner seeking habeas corpus relief pursuant to 28 U.S.C. § 2254. In his Report and Recommendation, Magistrate Judge Rogers recommends granting the Respondent’s motion for summary judgment.

Grayson filed objections to the Report and Recommendation. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party’s right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1) (2006).

magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that Grayson's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his claims. In addition, at the conclusion of Grayson's objections, Grayson quotes extensive portions of State v. Muldrow, 559 S.E.2d 847, 850 (S.C. 2002), wherein the court held that the trial court erred in denying the defendant's motion for a directed verdict on the armed robbery charge because "words alone are not sufficient" as additional evidence must corroborate the "allegation of being armed." The court interprets Grayson's extensive quotation of this case as an argument that the evidence was insufficient to support his armed robbery conviction. This new claim is procedurally defaulted.

"It is the rule in this country that assertions of error in criminal proceedings must first be raised in state court in order to form the basis for relief in habeas. Claims not so raised are considered defaulted." Breard v. Greene, 523 U.S. 371, 375 (1998) (internal citation omitted). Thus, "state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999).

Procedural default may be excused only if Grayson "can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice." Coleman v. Thompson, 501 U.S. 722, 750 (1991). Grayson has not provided the court with any evidence to establish cause for default or prejudice for defaulting. Moreover, this claim is without merit

because Grayson pled guilty. “A voluntary and intelligent plea of guilty is an admission of all the elements of a formal criminal charge and constitutes an admission of all material facts alleged in the charge.” United States v. Willis, 992 F.2d 489, 490 (4th Cir. 1993) (internal quotation marks and citations omitted). Therefore, after a thorough review of the magistrate judge’s Report and the record in this case, the court adopts Magistrate Judge Rogers’ Report and Recommendation.

It is therefore

ORDERED that the Respondent’s motion for summary judgment, docket number 14, is granted and the petition is dismissed. It is further

ORDERED that Grayson’s motion for summary judgment, docket number 21, is denied. It is further

ORDERED that a certificate of appealability is denied because Grayson has failed to make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
February 22, 2010

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.